

AUG 22 2008

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

SHIPLEY DO-NUT FLOUR AND
SUPPLY CO.,
SHIPLEY PROPERTIES,
LAWRENCE W. SHIPLEY, III,
JULIAN GARCIA,
JIMMY RIVERA, and
CHRISTOPHER HALSEY,
Defendants.

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CRIMINAL NO. 08-

UNDER SEAL

08-576

Sealed

Public and unofficial staff access
to this instrument are
prohibited by court order.

Unsealed
8-28-08

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

COUNT ONE
(Conspiracy)

A. INTRODUCTION.

At all times material hereto:

1. The Company.

a. SHIPLEY DO-NUT FLOUR AND SUPPLY COMPANY, INC.

(hereafter "SHIPLEY DO-NUTS") is a corporation that is involved in the supply of baking materials and logistical support to retail stores and to two hundred franchises across Texas, Alabama, Arkansas, Louisiana, Mississippi, and Tennessee.

b. SHIPLEY DO-NUTS's headquarters in Houston includes a warehouse, two kitchens, storerooms, offices, and employee and management housing.

c. SHIPLEY PROPERTIES, INC. owns property on behalf of SHIPLEY DO-NUTS including housing located at SHIPLEY DO-NUTS's Houston headquarters where undocumented aliens who worked for SHIPLEY DO-NUTS resided.

2. Company Owner and Managers.

a. LAWRENCE W. SHIPLEY, III, is the president of SHIPLEY DO-NUTS and SHIPLEY PROPERTIES. He has been acting in this capacity since March 2005.

b. JIMMY RIVERA is a former warehouse manager for SHIPLEY DO-NUTS.

c. JULIAN GARCIA is a current warehouse manager for SHIPLEY DO-NUTS.

d. CHRISTOPHER HALSEY is a current warehouse supervisor for SHIPLEY DO-NUTS.

e. SHIPLEY DO-NUTS delegated the authority to make managerial decisions including, but not limited to, hiring, job assignment and termination

decisions to LAWRENCE W. SHIPLEY, III, JULIAN GARCIA, JIMMY RIVERA, and CHRISTOPHER HALSEY.

3. Employee Immigration Forms.

- a. Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, requires employers to hire only United States citizens and aliens who are authorized to work in the United States. Employers must verify employment eligibility of any persons hired after November 6, 1986 using the Form I-9.
- b. The employer is required to examine, at the time of hire, the documentation provided by the individual that establishes his identity and employment eligibility to ensure that the documents presented appear to be genuine and to relate to the individual.
- c. The employer must retain the I-9 for three years after the date of hiring or one year after the date the individual's employment is terminated, whichever is later.
- d. Section 1 of the I-9 form is to be completed and signed by the employee at the time the employee is hired. Section 1 requires personal identifying information for the employee and an attestation, under penalty of perjury, by the employee that he/she is a citizen or national of the United States, a lawful permanent

resident, or an alien authorized to work. If Section 1 is prepared by a person other than the employee or is translated to the employee, the form requires the signature and attestation, under penalty of perjury, of the person who assisted in the completion of the form.

e. Section 2 of the I-9 form, "Employer Review and Verification" requires the employer to examine evidence of identity and employment eligibility within three days of employment, and to list the documents provided by the employee for employment verification. Section 2 contains a certification section for the employer to attest, under penalty of perjury, that the employer has examined the documents presented, that the documents appear to be genuine, and that to the best of the employer's knowledge, the employee is eligible to work in the United States.

4. No Match Letters.

a. Each year employers report to the Social Security Administration (SSA) using Internal Revenue Service (IRS) Form W-2s the amount of wages paid, the amount of FICA withholdings and other information for each employee. The W-2s identify employees by name and Social Security Number (SSN) (as well as other criteria) and provide the employer's tax identification number. IRS regulations permit SSA to use the information reported on the W-2s to determine eligibility for, and the amount of, social security benefits.

b. After it receives the W-2s, SSA verifies the nine digit numbers provided in the W-2s and name of the employees prior to assigning earnings to a specific SSN for future social security benefits. When the nine digit number provided by the employer on the W-2 does not match a known SSN in SSA's records, a letter is sent to the employer—a No Match letter which lists up to the first 500 problematic nine digit numbers which do not match known SSNs. SSA sends No Match letters to employers who submit a wage report containing more than ten W-2s that SSA cannot process and in which the mismatches represent more than .5 percent of the total W-2s in the employer's submitted wage report. Meanwhile, that worker's earnings are posted to SSA's Earnings Suspense File until they can be matched with a known SSN. 20 C.F.R. § 422.120(a).

c. The No Match letter gives the employer the opportunity to correct the inaccurate SSN information so that SSN can properly assign the earnings.

B. THE CONSPIRACY AND ITS OBJECTS.

5. From at least in or about January 1994 , through in or about April 2008, in the Southern District of Texas, and elsewhere, defendants,

SHIPLEY DO-NUTS and SHIPLEY PROPERTIES,

conspired, combined, confederated and agreed, with others known and unknown, to conceal, harbor, and shield from detection, and to attempt to conceal, harbor and

shield from detection, aliens, knowing and in reckless disregard of the fact that the aliens had come to, entered, and remained in the United States in violation of law, contrary to Title 8, United States Code, Section 1324(a)(1)(A)(iii).

C. MANNER AND MEANS.

6. It was part of the conspiracy that defendants and other conspirators would and did hire Hispanic manual laborers with little or no regard to the legal status of the workers—in April 2008 over 40% of SHIPLEY DO-NUT's workforce were undocumented aliens.

7. It was part of the conspiracy that defendants and other conspirators would and did hire undocumented aliens for jobs without properly completing I-9 forms for the workers and/or knowingly accepting fraudulent identification and work authorization documents in connection with I-9 forms—in April 2008 a review of the I-9s for SHIPLEY DO-NUTS revealed that over 50% of the I-9s for workers employed by SHIPLEY DO-NUTS were deficient and many of these I-9s were completed years after undocumented aliens began working for the company.

8. It was part of the conspiracy that defendants and other conspirators would and did provide housing for undocumented workers on property adjacent to SHIPLEY DO-NUT's headquarters in Houston, Texas.

9. It was part of the conspiracy that defendants and other conspirators

would and did fail to take corrective measures in ensuring the company hired workers authorized to work in the United States after receiving SSA No Match letters.

D. OVERT ACTS.

10. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed by the conspirators within the Southern District of Texas and elsewhere:

a. On October 14, 1998, SHIPLEY DO-NUTS knowingly hired an undocumented alien who later resided in company provided housing with the initials J.G. after the alien told JIMMY RIVERA that he was an illegal alien—the alien's I-9 form reflected a false name. On April 6, 2005, this alien completed another I-9 form with a third name that was different from the October 14, 1998 I-9 form and from the alien's actual name.

b. In January 1994, SHIPLEY DO-NUTS hired an undocumented alien who later resided lived in company provided housing with the initials J.F. after he provided a restricted social security number not valid for employment. On January 1, 1998, a letter was written on the company's behalf stating that an undocumented alien with the initials J.F. had failed to qualify for amnesty from the Immigration and Nationalization Service (INS).

c. On November 4, 1998, SHIPLEY DO-NUTS hired an

undocumented alien who later resided in company provided housing with the initials G.C. who was provided with a social security number for his I-9 by JIMMY RIVERA which was one number off from RIVERA's true social security number. On July 23, 2004, this alien completed a new I-9 using a different social security number.

d. On November 14, 2001, SHIPLEY DO-NUTS hired an individual with the initials J.C. who later resided in company provided housing and continued to employ the individual after his work authorization expired on September 9, 2002. On May 12, 2006, LAWRENCE W. SHIPLEY III wrote a letter on this undocumented alien's behalf to INS stating that the individual lived in company provided housing. SHIPLEY DO-NUTS did not complete the individual's I-9 until January 17, 2008.

All in violation of Title 8, United States Code, Sections 1324(a)(1)(iii) and (v)(I).

COUNT TWO
(Hiring of Undocumented Aliens)

From at least in or about January 1994 , through in or about April 2008, in the Southern District of Texas, and elsewhere, defendants,

JULIAN GARCIA and JIMMY RIVERA,
hired for employment in the United States, undocumented aliens knowing the aliens were unauthorized aliens with respect to such employment.

In violation of Title 8, United States Code, Section 1324a(a)(1)(A).

COUNT THREE

(Continuing Employment of Undocumented Aliens)

From at least in or about March 2005 , through in or about April 2008, in the Southern District of Texas, and elsewhere, defendants,

LAWRENCE W. SHIPLEY, III and CHRISTOPHER HALSEY,
continued to employ undocumented aliens at SHIPLEY DO-NUTS in the United States knowing such aliens were unauthorized aliens with respect to such employment.

In violation of Title 8, United States Code, Section 1324a(a)(2).

NOTICE OF CRIMINAL FORFEITURE
(18 U.S.C. § 982(a)(6)(A))

Pursuant to Title 18, United States Code, Section 982(a)(6), the United States gives notice to defendants:

SHIPLEY DO-NUTS and SHIPLEY PROPERTIES,
that in the event of conviction for conspiracy it will seek to forfeit all property used or intended to be used to facilitate the commission of the violations of Title 8, United States Code, Section 1324(a), as charged in Count One of the Information.

The property subject to forfeiture includes, but is not limited to, the following property:

(1) The real property and appurtenances located at 1002 Jerome, Houston, Texas, 77009 and legally described as:

Lot Eleven (11) in Block Fifteen (15) of STUDE'S FIRST ADDITION, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 3, Page 56 of the Map Records of Harris County, Texas.

(2) The real property and appurtenances located at 1006 Jerome, Houston, Texas, 77009 and legally described as:

Lots (s) Twelve (12), in Block Fifteen (15), of STUDES ADDITION, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 3, Page 56 of the Map Records of Harris County, Texas.

(3) The real property and appurtenances located at 1010 Jerome, Houston, Texas, 77009, and legally described as:

Lot Thirteen (13), in Block Fifteen (15), of STUDES ADDITION, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 3, Page 56 of the Map Records of Harris County, Texas.

(4) The real property and appurtenances located at 1024 Jerome, Houston, Texas, 77009, and legally described as

Lot 16 (Sixteen), in Block 15 (Fifteen), of STUDE'S FIRST ADDITION, together with all improvements there-on.

(5) The real property and appurtenances located at 1001 Winston, Houston, Texas, 77009, and legally described as

Lot Ten (10), in Block Nineteen (19), of STUDE'S FIRST ADDITION, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 3, Page 56 of the Map Records of Harris County, Texas.

(6) The real property and appurtenances located at 1009 Winston, Houston, Texas, 77009, and legally described as

Lot Seven (7) in Block Nineteen (19) of STUDES FIRST ADDITION, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 3, Page 56 of the Map Records of Harris County, Texas.

(7) The real property and appurtenances located at 1017 Winston, Houston, Texas, 77009, and legally described as

Lot Six (6), in Block Nineteen (19), of STUDE'S FIRST ADDITION, an Addition in Harris County, Texas, according to the map or plat thereof; recorded in Volume 3, Page 56 of the Map Records of Harris County, Texas.

(8) The real property and appurtenances located at 1022 Louise, Houston, Texas, 77009, and legally described as

Lot(s) Sixteen (16), in Block Six (6), of STUDE'S 1ST ADDITION, an addition in Harris County, Texas, according to the map or plat thereof; recorded in Volume 3, Page 56 of the Map Records of Harris County, Texas.

(9) The real property and appurtenances located at 1020 Post, Houston, Texas, 77009, and legally described as

Lot Two Hundred Sixty-Five (265), in Block Eleven (11) of Colonial Gardens, an addition in Harris County, Texas, according to the map or plat thereof; recorded in Volume 13, Page 4 of the Map Records of Harris County, Texas.

SUBSTITUTE ASSETS

In the event that any of the property subject to forfeiture as a result of

any act or omission of the defendants:

- a. cannot be located upon exercise of due diligence;
- b. has been placed beyond the jurisdiction of the Court;
- c. has been transferred or sold to, or deposited with a third party;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States to seek forfeiture of any other property of the defendants up to the value of such property pursuant to Title 21, United States Code, Section 853(p), incorporated by Title 18, United States Code, Section 982(b)(1).

DONALD J. DeGABRIELLE, JR.
United States Attorney
Southern District of Texas

By: 
RYAN D. McCONNELL
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